



MINUTES
Judicial Appointments Advisory Board
City of Scottsdale
Regular Meeting
6:00 p.m., Thursday, August 25, 2011
Human Resources Pinnacle Training Room
7575 E. Main Street

PRESENT: Paul Rybarsyk, Chair
Donald Alvarez, Vice Chair
Judge Bruce Cohen, Board Member
Dr. Ira Ehrlich, Board Member
Francis Scanlon, Board Member

ABSENT: Kenneth Weingarten, Board Member
Judge John Rea, Board Member

STAFF: Valerie Wegner
Judy Dewey
Sherry Scott

OTHERS: Janet Cornell, Court Administrator

CALL TO ORDER

The meeting was called to order at 6:01 p.m.

ROLL CALL

A formal roll call confirmed the presence of a quorum as noted above. Chair Rybarsyk noted that Judge John Rea has moved out of Scottsdale and is therefore no longer eligible to remain on the Board.

1. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON JUNE 30, 2011

BOARD MEMBER EHRLICH MOVED TO APPROVE THE MINUTES OF THE JUNE 30, 2011 PUBLIC MEETING. VICE CHAIR ALVAREZ SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).

2. ACKNOWLEDGEMENT OF NEW BOARD MEMBER.

Ms. Wegner stated that Judge Cohen has met all of the official requirements necessary to participate in JAAB meetings. He has been sworn in, trained in board ethics, has acknowledged the ethics code, and signed the personal interest disclosure form.

3. DISCUSS REVISED PRESIDING CITY JUDGE APPOINTMENT PROCESS

Ms. Wegner reviewed the revised Presiding Judge recruitment timeline. She said Terry Welker, Human Resources Executive Director, met individually with City Council Members to discuss their expectations for the recruitment process. Some Council Members prefer that the entire process, including all interviews, be completely transparent and conducted in public, while other Council Members prefer to be able to ask questions in Executive Session. As a compromise, staff proposes that JAAB interviews be scheduled at the City Hall Kiva to make it easy to record the meetings and allow Council Members to attend in person, if interested, or to watch the recording for the purpose of obtaining a thorough introduction of each candidate prior to the City Council interviews with the candidates that move forward in the process.

Ms. Wegner noted that JAAB is tasked with selecting a minimum of six (6) candidates to interview, in accordance with City Code. Each initial interview will be scheduled for an hour. Staff proposes that the interviews take place on one Saturday when the Kiva is generally available and to allow for completion on the same day. JAAB will be given time to discuss the candidates and recommend a minimum of three (3) candidates to interview with City Council, also in accordance with City Code.

Board Member Scanlon said that if one of the in-house candidates becomes the new Presiding Judge, the Board would have to meet again to select a new Associate Judge to replace them. Ms. Wegner added that as long as the process starts within 40 days, candidates could be drawn from the Presiding Judge application pool, instead of having to open up a new recruitment. Each candidate would be contacted again to ascertain whether they are interested in interviewing for the Associate Judge position.

Board Member Scanlon queried whether residency status is required for judges. Ms. Scott responded that residency used to be required, but now the City Charter makes no reference to the matter. City Council, could, however, decide to make that a requirement if they wanted to. Ms. Wegner noted that the recruitment brochure states that residency may be required.

VICE CHAIR ALVAREZ MOVED TO HOLD THE INITIAL PRESIDING JUDGE INTERVIEWS ON SEPTEMBER 24. BOARD MEMBER EHRLICH SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).

Ms. Dewey distributed a list of possible interview questions reviewed by the Presiding Judge and the Court Administrator. Ms. Wegner noted that the Board was free to ask their own questions, and could decide to reject any of the suggested questions. Chair Rybarsyk suggested that Board Members meet again before September 24, to decide which questions to ask during the interviews. Ms. Wegner said that discussion of interview questions could be placed on the September 24 agenda prior to the agenda item for the interviews.

Ms. Wegner said that if JAAB wishes to make the recommendation to City Council directly upon the conclusion of the interviews on September 24, due diligence will need

to be completed on all selected candidates in advance of the interviews. It will be up to JAAB to determine the criteria for the reference checks. Vice Chair Alvarez suggested that each Board Member take responsibility for checking one candidate. He proposed that the Board discuss their findings prior to the interviews, as that might reveal the need to ask specific questions. Board Member Scanlon questioned the need for due diligence on Judge Olcavage and Judge Jejna since the recent reappointment process turned up nothing of concern. Because of the difference in qualifications for an Associate City Judge and Presiding City Judge, it was determined that all selected candidates will be checked in the same manner. Ms. Scott said the meeting could be agendaized to allow for a possible executive session, should one become necessary to discuss confidential information. Board Member Judge Cohen doubted that each interview would last one hour. Following brief discussion, Ms. Wegner stated that each interview session could be scheduled for 45 minutes.

Ms. Wegner reviewed the due diligence process. Board Members determined they would contact the references listed on the applications, as well as previous employers, other judges and attorneys they've worked with, and court administrators. Staff will contact the Arizona Commission on Judicial Conduct and the Arizona State Bar to determine if any charges have been filed against the candidates.

Board Member Ehrlich asked whether Board Members could contact the applicants directly. Ms. Scott said she is unaware of any legal rule preventing that, but while Arizona's Open Meeting Law allows for interviews to be held in Executive Session, the typical practice in Scottsdale has been to interview charter officers and the Presiding Judge in public. It is important that each applicant feels like they have been treated the same as all the others and that there is uniformity and fairness in the process.

4. DETERMINE APPLICANTS TO BE INTERVIEWED FOR PRESIDING CITY JUDGE

The Board felt that there was no reason to enter into Executive Session to discuss the applicants. Board Member Ehrlich noted that since two of the applicants were highly regarded in-house candidates who were recently reappointed, they should be included in the top six (6). Those candidates already know the Court, are familiar with Presiding Judge duties, and JAAB has already acknowledged their excellence. Chair Rybarsyk agreed that Judge Olcavage and Judge Jejna would receive much support. The Board decided to focus on selecting four (4) more candidates from the remaining applicants.

Chair Rybarsyk noted that Board Member Weingarten could not attend the meeting, but indicated his support for applicants Forshey and Lamb from the first set of five (5) applications that were forwarded. Ms. Wegner noted that Mr. Weingarten did not have a chance to review the second set of five (5) applications. Ms. Scott indicated that since Board Member Weingarten was not present at the meeting, his selections could not be considered as part of the vote.

Board Member Cohen suggested that the fairest process would be to consider each applicant individually. Vice Chair Alvarez felt that Caron Close and John Lamb particularly stood out. Board Members Ehrlich and Scanlon agreed. Board Member Ehrlich said the Presiding Judge needs to be organized and applicant France turned in an incomplete and unsigned application.

Board Member Ehrlich felt that John Lamb, coming from Holbrook, would be unfamiliar with the Scottsdale Court and its politics, and is accustomed to an entirely different environment. That said, he has strong credentials from Stanford and Northwestern, and has been a City Councilman and a Presiding Judge in Holbrook. He deserves a good look. Chair Rybarsyk noted that Holbrook's judges are elected not appointed. The Board unanimously felt that John Lamb was a good candidate.

Board Member Ehrlich said Caron Close was another strong candidate, citing that nobody knows the inner workings of a court better than a prosecutor that works in it. Vice Chair Alvarez said the biggest concern of having a prosecutor as judge is their lack of experience with the administrative aspects. Board Member Cohen noted the potential for a conflict of interest in that Caron Close's office has represented the City on a number of actions. If she is appointed, it could have practical implications. Prosecutors can make excellent judicial officers, but they would not have the day-to-day working knowledge of a court. It is a challenge for any judicial officer when they take office, but it is one that most overcome fairly easily. Vice Chair Alvarez suggested that former prosecutors often hold prosecutors to a higher standard, since they know how the office works. Chair Rybarsyk noted that pending cases could be a problem. He indicated that he would not be in favor of moving her forward. The other four Board Members supported her as an interview candidate.

Board Member Cohen said he viewed the application of Karl Eppich favorably. He is currently with the Mesa Court, which is well run. Board Member Ehrlich noted that his background at Stanford and UC Irvine is impressive and he deserves support. Chair Rybarsyk said he has been before Judge Eppich, and he views him as a good judge who is well mannered, astute, and possesses a great demeanor. Vice Chair Alvarez noted that he does not want to move to Scottsdale, which could be unfavorable in the eyes of City Council. All five Board Members indicated their support for Judge Eppich to move forward.

Board Member Cohen said he admires Tim Forshey, but noted that he was disciplined twice by the State Bar, one of which involved a two-year censure. He is very qualified, but this information should be taken into consideration. He felt it would have helped his case if he had explained the circumstances that led to the disciplinary actions. Vice Chair Alvarez said the questionnaire does not ask applicants for that type of information. Ms. Wegner stated that he could be asked for that information in the interviews should he be moved forward. Board Member Ehrlich queried whether the malpractice suit against him was a cause for worry. Vice Chair Alvarez responded that clients will sue for malpractice when it comes time to collect fees. Chair Rybarsyk agreed that malpractice matters are not a concern. Judge Forshey is interesting, well-qualified, and has a diverse background. Vice Chair Alvarez said the candidate lacks administrative experience pertaining to courts.

The Board opted to eliminate applicants Astrowsky and France.

Board Member Cohen said he was impressed by Nancy Sorensen's application, who has worked as counsel for the Mesa Police Department. Chair Rybarsyk noted she was also a magistrate for nine years in Michigan. Mesa is a big city with a large police force. He felt she would make a good interview candidate. Board Member Ehrlich questioned whether she would be able to step directly into the Presiding Judge position. It might make more sense to be an Associate Judge first. Board Member Cohen stated that she

would have a sophisticated understanding of law enforcement and would have no conflict of issue in the Scottsdale Court.

Board Member Cohen said applicant Tutelman has worked in the Phoenix City Prosecutor's Office for 25 years, but has not advanced beyond Charging Bureau Chief in all that time. Chair Rybarsyk agreed that there were better candidates for the job.

The Board discussed whether to add a seventh interview slot for applicant Forshey. Vice Chair Alvarez said he is not concerned with the malpractice suits or the disciplinary measures, but he questioned whether he has enough experience to handle the Presiding Judge's responsibilities. Board Member Scanlon asked whether citizens would be dismayed to learn that JAAB recommended someone who has been censured by the State Bar. Chair Rybarsyk said the applicant would have a chance to address those questions in the interview. JAAB can access his bar record to determine what the complaint involved. Board Member Ehrlich felt that there are enough qualified candidates to make a seventh one unnecessary. Forshey might make a good candidate for an Associate Judge position, but it would be a reach to consider him for Presiding Judge.

VICE CHAIR ALVAREZ MOVED TO APPROVE CARON CLOSE, KARL EPPICH, OREST JEJNA, JOHN LAMB, JOSEPH OLCAVAGE, AND NANCY SORENSEN AS THE SIX (6) INTERVIEW CANDIDATES FOR THE PRESIDING JUDGE POSITION. BOARD MEMBER EHRLICH SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).

Chair Rybarsyk queried whether staff should select due diligence assignments. Board Member Cohen said it would be best for him to handle the due diligence on Nancy Sorenson, since it would require contacting people from out of state who might be more inclined to respond to a judge's inquiry. Board Member Ehrlich requested John Lamb. Board Member Scanlon said he would like to take Judge Olcavage. Chair Rybarsyk selected Karl Eppich. Vice Chair Alvarez chose Caron Close. Judge Jejna will be assigned to Board Member Weingarten. Chair Rybarsyk advised Board Members to any requests for confidentiality.

5. FUTURE AGENDA ITEMS

No further agenda items were presented.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting of the Judicial Appointments Advisory Board adjourned at 7:28 p.m.

Respectfully submitted,
Valerie Wegner
HR Management Analyst

Reviewed by,
Paul Rybarsyk
JAAB Chairperson